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No. 04-37

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In The Supreme Court of the United States

MICHAEL CLINGMAN, Secretary of the Oklahoma State Election Board; GLO HENLEY, Chairman of the Oklahoma State Election Board; KENNETH MONROE, Vice Chairman of the Oklahoma State Election Board; THOMAS E. PRINCE, Member of the Oklahoma State Election Board; and the OKLAHOMA STATE ELECTION BOARD,

Petitioners,

v.

ANDREA L. BEAVER; FLOYD TURNER; MINELLE L. BATSON; MARY Y. BURNETT; MICHAEL L. SEYMOUR; TERRY L. BEAVER; ROBERT T. MURPHY; SHARON LYNN ATHERTON; ROGER BLOXHAM; STEVE GALPIN; RICHARD P. PRAWDZIENSKI; MICHAEL A. CLEM; WHITNEY L. BOUTIN, JR.; CHRISTOPHER S. POWELL; CHARLES A. BURRIS; and the LIBERTARIAN PARTY OF OKLAHOMA, a/k/a LIBERTARIAN POLITICAL ORGANIZATION,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF FOR RESPONDENTS

JAMES C. LINGER
Counsel of Record
1710 South Boston Avenue
Tulsa, OK 74119-4810
(918) 585-2797

Counsel for Respondents

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
SUMMARY OF THE ARGUMENT	1
ARGUMENT	8
I. OKLAHOMA'S SEMI-CLOSED PRIMARY ELECTION LAW TO THE EXTENT IT FORBIDS A PARTY-OPTION OPEN PRIMARY IS UNCONSTITUTIONAL UNDER THE FACTS AND CIRCUMSTANCES PRESENTED TO THE DISTRICT COURT BELOW	8
A. The "Integrity" Of The Electoral Process Is Not Threatened When Voters Choose Not To Vote In Their Parties' Primaries	8
B. Voters Registered With One Political Party Publicly Selecting Another Political Party's Primary Ballot Do Commit An Act Of Political Association Because It Is More Meaningful To Select Another Party's Primary Ballot Than To Be A Non-Voter In A Voter's Own Political Party Primary	10
C. Oklahoma Has Severely Restricted Voters' Political Party Registration Choices So As To Create A Severe Burden On The LPO And Restrict Political Choice And Association	12
D. Oklahoma Makes It Virtually Impossible For Republican, Democratic, And Independent Voters To Change Their Political Affiliation To A Newly Recognized Political Party Unless The Registered Voters Wish To Become A Candidate Of The New Political Party	14

TABLE OF CONTENTS – Continued

Page

E. Oklahoma Voter Registration Laws, Unlike Those Of Most Other States, Place Severe Restrictions On Registration In Non-Recognized Political Parties As Well As Severely Restricting Voter Registration In A New Political Party After It Has Been Recognized In Oklahoma 19

II. OKLAHOMA DID NOT PRESENT IN THE TRIAL BELOW ANY LEGITIMATE STATE INTEREST WHICH MAKES IT NECESSARY TO BAN A PARTY-OPTION OPEN PRIMARY 24

A. A Correct Reading Of Footnote 13 In This Court's Decision In *Tashjian* Calls For An Analysis Of The Particular Facts Involved In Each Case And Not The Adoption Of A Rigid Rule Allowing Or Disallowing A Party-Option Open Primary 24

B. As Applied To The Libertarian Party Or Newly Recognized Political Parties, Oklahoma's Ban On Party-Option Open Primaries Is Neither Reasonable Nor Politically Neutral 32

C. This Case Is Not Analogous To *Timmons v. Twin Cities Area New Party* 34

III. UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, OKLAHOMA'S BAN ON A PARTY-OPTION OPEN PRIMARY IS UNCONSTITUTIONAL UNDER EITHER STRICT OR INTERMEDIATE SCRUTINY 39

CONCLUSION 48

TABLE OF AUTHORITIES

Page

CASES:

Anderson v. Celebrezze, 460 U.S. 780 (1983) .....*passim*

Beaver v. Clingman, 363 F.3d 1048, 120 A.L.R. 5th 707 (10th Cir. 2004).....*passim*

Burdick v. Takushi, 504 U.S. 428 (1992) 4, 42, 47

California Democratic Party v. Jones, 530 U.S. 567 (2000).....*passim*

Cool Moose Party v. State of Rhode Island, 183 F.3d 80 (1st Cir. 1999) .....*passim*

Cousins v. Wigoda, 419 U.S. 477 (1975)..... 41

Crussel v. Oklahoma State Election Bd., 497 F.Supp. 646 (W.D. Okla. 1980) 16

Democratic Party of the United States v. Wisconsin, ex rel. LaFollette, 450 U.S. 107 (1981) 10, 28

Eu v. San Francisco County Democratic Comm., 489 U.S. 214 (1989) 35

Graves v. McElderry, 946 F.Supp. 1569 (W.D. Okla. 1996) 46

Jenness v. Fortson, 403 U.S. 431 (1971) 32

Kusper v. Pontikes, 414 U.S. 51 (1973) 38

Libertarian Party of Oklahoma v. Oklahoma State Election Bd., 593 F.Supp. 118 (W.D. Okla. 1984)..... 18

Nader v. Schaffer, 417 F. Supp. 837 (D. Conn. 1976), *summarily aff'd*, 429 U.S. 989 (1976) 27

O'Callaghan v. State, 6 P.3d 728 (Alaska 2000) 43

Rosario v. Rockefeller, 410 U.S. 752 (1973) 22, 25, 27, 29

Storer v. Brown, 415 U.S. 724 (1974).....8, 22, 25, 27, 29

TABLE OF AUTHORITIES – Continued

Page

Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986) ..... *passim*

Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997) ..... *passim*

Williams v. Rhodes, 393 U.S. 23 (1968) 32

CONSTITUTIONS:

Okla. Const. art. 3, § 3 22

U.S. Const. amend. I ..... *passim*

U.S. Const. amend XIV 3, 37, 38, 41

STATUTES:

Alaska Stat., §15-25-010 43

Alaska Stat., § 15-25-014 43

Alaska Stat., § 15-25-060 43

N.H. Rev. Stat. Ann. § 659.14(I) 13, 33, 44

Okla. Stat. tit. 26, § 1-102 ..... 1, 22

Okla. Stat. tit. 26, § 1-103 1

Okla. Stat. tit. 26, § 1-104 47

Okla. Stat. tit. 26, §1-104(A) 3

Okla. Stat. tit. 26, § 1-104(B)(4) 3

Okla. Stat. tit. 26, § 1-108 ..... *passim*

Okla. Stat. tit. 26, § 1-109 ..... *passim*

Okla. Stat. tit. 26, § 1-109(A) 1

Okla. Stat. tit. 26, § 1-109(B) 1, 2, 21

TABLE OF AUTHORITIES – Continued

Page

Okla. Stat. tit. 26, § 1-110 ..... 6, 11, 16

Okla. Stat. tit. 26, § 1-110(B) 21

Okla. Stat. tit. 26, § 4-103 1

Okla. Stat. tit. 26, § 4-110.1 ..... 13, 14

Okla. Stat. tit. 26, § 4-112 ..... 6, 11, 16, 20

Okla. Stat. tit. 26, § 4-119 ..... *passim*

Okla. Stat. tit. 26, § 5-104 ..... 1, 20, 21

Okla. Stat. tit. 26, § 5-105 ..... 1, 15, 16, 20

Okla. Stat. tit. 26, § 5-105(A) 15, 16, 21

Okla. Stat. tit. 26, § 5-105(B) 21

Okla. Stat. tit. 26, § 5-110 ..... 1, 15

Utah Code Ann., § 20A-3-104.5 43

Utah Code Ann., § 20A-9-403(2)(a) 13, 43

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Gary D. Allison, Protecting Party Purity in the Selection of Nominees for Public Office: The Supremes Strike Down California's Blanket Primaries and Endanger the Open Primaries of Many States, 36 Tulsa L.J. 59 (2000) 11

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TABLE OF AUTHORITIES – Continued

Page

Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale L.J. 117 (1984)..... 28

Richard Winger, 2004 October Registration Totals, 20 Ballot Access News, no. 8, p. 3, (December 1, 2004) at http://www.ballot-access.org 24

SUMMARY OF THE ARGUMENT

The Respondents are Oklahoma voters and the Libertarian Party of Oklahoma – also known as the Libertarian Political Organization of Oklahoma (hereinafter referred to as the LPO).[1] The individual Respondents herein are registered Oklahoma voters affiliated with the Republican and Democratic parties or the LPO who wished to vote in the LPO primary election in Oklahoma on August 22, 2000, and in any future LPO primary or runoff primary elections[2]. The LPO was at the time of the

[1] The LPO is currently an unrecognized political party pursuant to Okla. Stat. tit. 26, § 1-109. During the more than four and a half years the instant case has been in litigation, the LPO has been a recognized political organization pursuant to Okla. Stat. tit. 26, § 1-109(B), a recognized political party pursuant to Okla. Stat. tit. 26, § 1-108, a recognized political organization after failing to maintain recognition pursuant to Okla. Stat. tit. 26, § 1-109(A), and a currently unrecognized political party pursuant to Okla. Stat. tit. 26, § 1-109(B). The LPO plans to regain political party recognition pursuant to Okla. Stat. tit. 26, § 1-108 for the next presidential election.

[2] The dates of the primary and runoff primary elections in Oklahoma have been changed since the decisions of the District Court and Tenth Circuit below. While the primary and runoff primary elections in Oklahoma were held on the fourth Tuesday in August and the third Tuesday of September of each even-numbered year prior to 2004, Okla. Stat. tit. 26, §§ 1-102 and 1-103 (see Resp. App.), the Oklahoma Legislature moved the primary and runoff primary elections forward approximately one month so that they now fall on the last Tuesday in July and the fourth Tuesday of August of each even-numbered year, Okla. Stat. tit. 26, §§ 1-102 and 1-103 (App.). Respondents have included in their Appendix (Resp. App.) those relevant election statutes which were in effect at the time of the District Court's decision, but which are not in effect now. Respondents have also included additional relevant statutes left out of the Appendix of the Brief of Petitioners (hereinafter "App."), viz.: Okla. Stat. tit. 26, §§ 4-103, 5-104, 5-105, and 5-110. Respondents adopt Petitioners' abbreviations set forth in footnote 1 of the Brief of Petitioners on the Merits. "Resp. App." refers to the Appendix to the Brief for Respondents.

filing of the original Complaint herein a political organization pursuant to Okla. Stat. tit. 26, § 1-109(B), but was from June 21, 2000, until shortly after the November 7, 2000, general election a recognized political party pursuant to Okla. Stat. tit. 26, § 1-108.[3]

On September 14, 2000, after the District Court turned down Respondents' request for a preliminary injunction as to the 2000 primary election, the Respondents filed an Amended Complaint (J.A. 12-23), noting that the LPO had passed by-laws and resolutions which would permit all registered Oklahoma voters to vote in any future primary or runoff primary elections conducted in Oklahoma for the LPO (Pet. App. 33). The LPO has run candidates in every presidential election year in Oklahoma from 1980 through 2000 (Pet. App. 34), and " . . . has been a fairly consistent participant in Oklahoma's primary elections." (Pet. App. 37). The LPO and its members believe that opening up the LPO's primary and runoff primary elections to all registered voters in Oklahoma would help the Party reach out to Libertarian-oriented voters of other political affiliations and produce a more viable LPO candidate for the general election. (Pet. App. 35). There are a number of Oklahoma voters who are registered in political parties other than the LPO who wish to vote in the LPO's primary and runoff primary elections (Pet. App. 35). In fact, the District Court found

[3] After the decision of the District Court below, the Oklahoma Legislature amended the ballot access laws and moved the deadline for the filing of petitions for the recognition of new political parties from May 31 to May 1 of even-numbered years. Okla. Stat. tit. 26, § 1-108. The older version in effect at the time of the District Court's decision can be found in Resp. App. herein, while the current version may be found at App. 3-4.

that it was highly likely that the ranks of registered Republican and Democratic voters in Oklahoma " . . . contained numerous voters who sympathize with the LPO but who simply do not wish to go through the motions of re-registering every time they are purged from the rolls [and] . . . will register with one of the major parties for no reason other than to avoid repeatedly being purged to unaffiliated status." (Pet. App. 48, 62).

A non-jury trial was held in the case on December 2 and 3, 2002, with the District Court ruling in a Memorandum Opinion on January 24, 2003 (Pet. App. 24-73), that the relief requested by Respondents should be denied and that Okla. Stat. tit. 26, §§ 1-104(A) and 1-104(B)(4), which ban a party-option open primary, are constitutional under the First and Fourteenth Amendments to the U.S. Constitution. In reaching its decision below, the District Court found that the instant case was not moot because the LPO was likely to have primary elections in the future in Oklahoma, there were 23 in effect open primary states in the United States, of which 3 states had party registration and allowed party-option open primaries without any evidence of confusion or harm, and the State's fears for voter confusion, raiding, swamping, and administrative difficulties were not borne out by the evidence. (Pet. App. 37-44, 61-64). However, the District Court did find that because some primary elections of the major parties in Oklahoma were decided by 5% or less of the vote, allowing some Republicans and Democrats to vote in the LPO's primary might affect the outcome of the major party primaries (Pet. App. 49, 59, 69-71).

On appeal, the Tenth Circuit reversed the decision of the District Court because the election laws in question impermissibly violated the Respondents' First Amendment

rights to political association. In reaching its decision, the Tenth Circuit considered the case in light of this Court's decisions in *California Democratic Party v. Jones*, 530 U.S. 567 (2000) and *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986). The Tenth Circuit not only used the balancing test set forth by this Court in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), but tempered its review by considering the severity of the burden placed on Respondents' rights by the election laws in question as dictated by this Court in *Burdick v. Takushi*, 504 U.S. 428 (1992) and *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). *Beaver v. Clingman*, 363 F.3d 1048, 120 A.L.R. 5th 707 (10th Cir. 2004); (Pet. App. 1-23).

Petitioners contend that the ruling of the Tenth Circuit " . . . eliminated a State's right to require party registration prior to a primary election." (Pet. Brief 8) and that a state " . . . may not, to any extent, mandate the manner in which the party chooses its candidates within the framework of a state-sponsored and regulated election." Petitioners use "strawman" arguments and misstate the holding of the Tenth Circuit because the decision applied only to the particular facts of Oklahoma primary election law as it impacted the LPO in the record that was presented to the District Court. In actuality, the decision was not a broad-based decision, but rather found that the case presented an issue the possibility of which had first been raised in footnote 13 in *Tashjian*, and that the case at bar involved issues which lay at the intersection of this Court's decisions in *Jones* and *Tashjian*. (Pet. App. 2, 14).

Finally, the Petitioners characterize the Tenth Circuit as incorrectly applying a " . . . strict standard of review against the State's interest which preordained the unconstitutionality of Oklahoma's and many other States'

election laws." (Pet. Brief 8). Once again, the Petitioners are incorrect. The Tenth Circuit started out with the balancing test used by this Court in *Anderson v. Celebrezze* and cautiously proceeded, taking into consideration this Court's comments in footnote 13 of *Tashjian* (Pet. App. 1-11, 19-23). The Tenth Circuit simply found that the State of Oklahoma had failed to demonstrate on the record presented to the Court that a party-option open primary would cause political instability.

It is paternalistic for Oklahoma to assume that allowing Republicans and Democrats to choose to accept an invitation to vote in the LPO primary would adversely affect the Republican and Democratic parties' primary choices. As this Court said in *Tashjian*, the

> direst predictions about destruction of the integrity of the election process and decay of responsible party government are not borne out by the experience of the 29 States which have chosen to permit more substantial openness in their primary systems than Connecticut has permitted heretofore. *Tashjian*, 479 U.S. at 223, n. 12.

The evidence in the trial below overwhelmingly showed that anywhere from 69 to 75 percent of the Democrats and Republicans in Oklahoma failed to vote in their parties' primary elections (R.T. 126-127, 226). Those percentages dwarf the likely one percent or less of combined Republicans, Democrats, and Independents who might choose to vote in a future LPO primary (Pet. App. 40; R.T. 116-118, 322-323; Def. Ex. 8, J.A. 25)[4]. Any possible effects on the

[4] The only Libertarian primary to ever exceed one percent of the total vote in an open primary election was the 2.2 percent received by

(Continued on following page)

nominees of the Democratic and Republican parties in Oklahoma are certainly much more likely to be the result of the huge number of Republicans and Democrats who choose to do something other than vote in their party's primary than to be caused by the small number of Republicans and Democrats who might vote in the LPO primary.

Moreover, any Republicans or Democrats who might vote in the LPO primary would not necessarily come from ones who might otherwise have voted in the Republican or Democratic primaries, but would more probably come from those Republicans and Democrats who would not vote in their party's primary anyway along with Libertarians who were registered as Republicans and Democrats but couldn't change their registration to Libertarian in time because of the workings of Oklahoma election laws. Okla. Stat. tit. 26, §§ 1-109, 1-110, 4-112, and 4-119. While the effect of the vast majority of Republicans and Democrats not voting in their party's primary in Oklahoma is huge, the State does not choose to advance the interests of "political stability" and "integrity of the parties" by denying Republicans and Democrats the free choice to decline their parties' primary invitations. So, too, the State should not deny any Republicans and Democrats (whether or not they would have voted in their party's primary election) the opportunity to vote in the LPO primary if an invitation is extended.

It is the decision of each political party as to whether or not it wants to open up or not its political party primary unless there is a compelling state interest to the contrary.

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the Libertarian candidate for governor in Wisconsin in 2002 (R.T. 117-118).

In *Jones* this Court held that a state could not order political parties to accept a blanket primary which forced political parties against their will to allow all voters – regardless of party registration – to vote in its primary. At issue in *Jones* was the constitutional right of the various political parties to freedom of political association – a right which, by its very nature, is a matter of choice. The nature of that right necessarily implies that the political parties are not limited to choosing to exclude some voters from the process, but are free to decide on their own to permit open participation in their primary elections as well.

The issue in *Jones* (as well as this case) is one of choice, not one of absolute rules as to what kind of primary can be conducted. Here, the Respondents favor freedom of choice for political parties and individual voters on voting in political parties' primary elections, while the Petitioners are anti-choice as to letting a political party decide whether it wishes to open up its primary to all Oklahoma registered voters and then letting individual voters make their own choice. Therefore, under the particular facts and laws in the case at bar the Supreme Court should affirm the judgment of the Tenth Circuit.

ARGUMENT

I. OKLAHOMA'S SEMI-CLOSED PRIMARY ELECTION LAW TO THE EXTENT IT FORBIDS A PARTY-OPTION OPEN PRIMARY IS UNCONSTITUTIONAL UNDER THE FACTS AND CIRCUMSTANCES PRESENTED TO THE DISTRICT COURT BELOW.

A. The "Integrity" Of The Electoral Process Is Not Threatened When Voters Choose Not To Vote In Their Parties' Primaries.

In determining exactly what the state's interest is in maintaining the integrity of the political process, it is important to look for guidance to past decisions of this Court. In *Storer v. Brown*, 415 U.S. 724 (1974), this Court stated that the state's strong interest in maintaining the integrity of the political process involved prevention of inter-party raiding, assuring that the winner is the choice of the majority, or at least a strong plurality, of those voting, protection of the political process from frivolous or fraudulent candidates, and confining each voter to one vote in one primary election. *Id.* at 731-733, 741.

If the purpose of the State is to protect the integrity of the Republican and Democratic primaries so that the selection of party nominees represents the choice of the party, that purpose is served by making sure that those Republicans and Democrats who vote in the party primary choose the party candidate, not by ensuring that party members who don't vote in the party primary have a say in the selection of the party's nominee. Otherwise, the State would need to require all party members to vote in their party's primary election in order to protect the integrity of the party. The integrity of the party and election process is protected by preserving the choice of the

"voting members" of the party, not the choice of all the registered party voters and non-voters (whatever that might be).

The integrity of a political party's primary in Oklahoma is no more threatened by a party-option open primary for another political party than it is by the failure of party members to participate in the party's primary for other reasons. The vast majority of Republicans and Democrats at any given election do not vote in their party's primary. There has never been a political party primary in Oklahoma since World War II where a majority of Republicans and Democrats have voted. In 2000, 75 percent of the registered Republicans and 69 percent of the registered Democrats who had an opportunity to vote in their party's primary election did not do so (R.T. 126-127, 226). Nonetheless, integrity of the parties' political primaries is maintained because those Republicans and those Democrats who do choose to vote in their party's primary always choose the party's nominee. The vast majority of Republicans and Democrats who in any given primary election do not vote in their party's primary election never are responsible for choosing their political party's nominee.

The District Court's decision noted the State asserted that it had an interest in "protecting the integrity of the election process" and that that protection includes, "preserving the political parties as viable and identifiable interest groups, insuring that the results of primary elections . . . accurately reflect the voting of the party members. . . . " (Pet. App. 55-56; Pet. Brief 11-12). A party-option open primary would only threaten that interest if Oklahoma were somehow attempting to guarantee that all registered party members voted in the party's primary.

Since Oklahoma law permits political party members to not vote in their political party primary, allowing another party to have a party-option open primary poses no threat to the integrity of the system. After all, Oklahoma is obviously not worried about the significantly large majority of Republicans and Democrats who never on any given occasion vote in their party's primary election.

B. Voters Registered With One Political Party Publicly Selecting Another Political Party's Primary Ballot Do Commit An Act Of Political Association Because It Is More Meaningful To Select Another Party's Primary Ballot Than To Be A Non-Voter In A Voter's Own Political Party Primary.

The dissent in *Tashjian* said that it did not think there could be much of an association made with a political party by a member of another party choosing the primary ballot of that political party. *Tashjian*, 479 U.S. at 235 (Scalia, J., dissenting)[5]. The question might well be asked as to how much of a significant association a political party member has if he or she totally fails to vote in their political party's primary election. Certainly, the political association of a Republican or Democrat choosing the LPO primary ballot is much more significant than the Republican or Democrat who fails to vote in the primary election at all – particularly if the Libertarian-oriented

[5] As to political association, see *California Democratic Party v. Jones*, 530 U.S. at 577, n. 8, and *Democratic Party of the United States v. Wisconsin, ex rel. LaFollette*, 450 U.S. 107, at 130, n. 2 (1981) (Powell, J., dissenting), on the difference between voting in a blanket primary and choosing a party's primary ballot in an open primary.

Republicans and Democrats did not have the opportunity to change their registration in time to be Libertarians.[6]

Because there is no political party voter registration in Texas[7], registered voters may choose the primary ballot of any political party as long as they stick with that political party's ballot for that election year. It is hard to imagine how one could claim that it would be an insignificant political association if President Bush, his father (the former President), and the entire Republican Congressional delegation from Texas chose to vote in the 2006 Texas Democratic primary. After all, political party registration may mean no more than mere political inertia on the part of the voter, family tradition, a legally limited choice (e.g., Okla. Stat. tit. 26, §§ 1-109, 1-110, 4-112, and 4-119), community political leanings, or a decision made in

[6] Petitioners' reference in their Brief to the Respondent Floyd Turner, a Democratic Oklahoma voter who wished to vote in the LPO primary but did not wish to disaffiliate from the Democratic party, is not indicative of all the non-Libertarian Respondents. He was simply designated as an individual voter witness to avoid cumulative witnesses. Petitioners' assertion in their Brief is incorrect wherein they state that " . . . nothing would have prevented Mr. Turner from voting for [his] candidate at the general election." (Pet. Brief 15). Mr. Turner might not have been able to vote for his candidate because his candidate might have lost the LPO primary. Further, the assertion that Mr. Turner or any Respondent could have registered as Libertarian is, as demonstrated below, incorrect by virtue of the operation of Okla. Stat. tit. 26, §§ 1-109, 1-110, 4-112, and 4-119.

[7] Texas is one of 21 states which does not have registration by political party. Utah in 1999 was the last state to begin allowing political party registration (R.T. 107-108). For a full listing of open primary, closed primary, semi-closed primary, and partisan and non-partisan blanket primary states see Gary D. Allison, Protecting Party Purity in the Selection of Nominees for Public Office: The Supremes Strike Down California's Blanket Primaries and Endanger the Open Primaries of Many States, 36 Tulsa L.J. 59, 63-64, n. 32-37 (2000).

order to obtain employment. Political party registration does not always fully express one's political beliefs or loyalties. One might well ask what political party registration meant as a significant political association in the last presidential election as to Democratic Senator Zell Miller of Georgia or Republican Senator Lincoln Chafee of Rhode Island.

C. Oklahoma Has Severely Restricted Voters' Political Party Registration Choices So As To Create A Severe Burden On The LPO And Restrict Political Choice And Association.

The dissent in *Tashjian* argued that there was no question of restricting the Republican party's ability to recruit and enroll Republican members by offering them the ability to select the Republican candidates because the Connecticut election law in question permitted " . . . an independent voter to join the Party as late as the day before the primary." *Tashjian*, 479 U.S. at 235. (Scalia, J., dissenting). However, there is a significant difference in the time allowed and the deadline set in which an individual can register with the LPO or other newly recognized political parties in Oklahoma as compared to the situation in the Connecticut of *Tashjian*. In comparison to the situation in *Tashjian* where a voter could change party registration the day before the primary election – or even the day of the primary election as in Iowa and Wyoming (R.T. 108, 115-116, 231), the various states filing the Amici Curiae brief in this case contend that in Oklahoma in order to " . . . vote in another party's primary, an Oklahoma voter need only fill out a single form and file it with her local election board secretary approximately three weeks before the primary election. See Okla. Stat. tit. 26,

§ 4-110.1 (2004)." Amici brief at 9.[8] While the difference between one day before a primary and approximately three weeks is of some significance, the brief of the Amici simply fails to properly represent to the Court what Okla. Stat. tit. 26, § 4-110.1 stands for.[9]

In fact, Okla. Stat. tit. 26, § 4-110.1 allows an Oklahoma resident who is not already a registered voter to register for a primary election no later than 24 days prior to a primary or other election. The error made in the Amici brief in representing to the Court that approximately three weeks before a primary election an Oklahoma voter could change party affiliation in order to vote in the Libertarian or some other party's primary is the result of failing to take into consideration Okla. Stat. tit. 26, § 4-119 which forbids, under the old version in effect at the time of trial of the case at bar (Resp. App. 3-4), any registered Oklahoma voters from changing their political party affiliation after July 1 at 5:00 p.m. during the months of

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[8] Two of the Amici Curiae states have election laws which should be considered: New Hampshire has a semi-closed primary system which allows an exception for an open primary for newly recognized political parties. N.H. Rev. Stat. Ann. § 659.14(I); while Utah allows for a party-option open primary. Utah Code Ann. §§ 20A-9-403 (2)(a). In the record it was noted that Utah had probably the weakest Democratic party in the country and that the Democratic party in Utah had conducted an open primary in 2002 without Utah having problems with instability. (R.T. 121-123, 133, 185; J.A. 79-80). It may be that the reason for heavily Republican Utah to participate in the Amici Curiae Brief is that the Republican dominated Legislature would like to repeal the party-option open primary for the purpose of maintaining the status quo prior to the Democratic party deciding upon an open primary.

[9] The District Court in its Memorandum Opinion made a similar mistake when it indicated that a voter who wanted to try LPO "politics may change his registered party affiliation only a few weeks before the primary election." (Pet. App. 70).

July, August, and September (or under the new law which went into effect April 1, 2004 (App. 9), of changing party affiliation after May 31 during the months of June, July, and August of any even-numbered year). Therefore, the correct interpretation of Okla. Stat. tit. 26, §§ 4-110.1 and 4-119, when read together, shows that only a previously unregistered voter may register within 24 days of a primary election, while all other registered voters are absolutely prohibited from changing their political affiliation from Republican, Democrat, or Independent to Libertarian or any other new political party affiliation for a period of over eight weeks before the primary election.[10]

D. Oklahoma Makes It Virtually Impossible For Republican, Democratic, And Independent Voters To Change Their Political Affiliation To A Newly Recognized Political Party Unless The Registered Voters Wish To Become A Candidate Of The New Political Party.

The difference between the day before or the day of the primary election for voters to change their political affiliation and a period of time of over eight weeks before a primary election is quite significant considering: "Until a

[10] Petitioners contend that Oklahoma allows a voter to change his party affiliation "approximately seven weeks prior to the primary election." (Pet. Brief 28). Actually, the period of time is closer to eight and a half weeks. In 2008, the primary election is on July 29, 2008, a period of time 59 days after the last day to change party affiliation on May 31, 2008. Okla. Stat. tit. 26, § 4-119. As is demonstrated hereafter, there are problems in changing political affiliation before May 31 of an even-numbered year if the voter desires to change registration into a newly recognized political party.

few weeks or even days before an election, many voters pay little attention to campaigns and even less to the details of party politics." *Jones*, 530 U.S. at 586 (Kennedy, J., concurring). Eight weeks before and until the primary election, and even before the filing period for candidates, Oklahoma law prevents registered Republicans, Democrats, and Independents from changing their political affiliation in order to vote in another political party's primary, pursuant to Okla. Stat. tit. 26, § 4-119 – which presumably exists to prevent "party raiding." Also, the six-month party or Independent affiliation rule for candidates, pursuant to Okla. Stat. tit. 26, § 5-105, presumably exists to prevent sore losers from running under a different political affiliation.

The lone exception to Oklahoma's voter registration and political affiliation change rules is if the Republican, Democratic, or Independent registered voter in Oklahoma wishes to be a new party candidate for office, in which case the potential candidates have 15 days from the date the new party is recognized to change their registration over as members of the new political party, Okla. Stat. tit. 26, § 5-105(A), even though that person could not vote in the primary election unless he chose to be a newly recognized party candidate. Therefore, while the candidate wishing to change parties has 15 days after party recognition, a Republican or Democrat wishing to change registration to vote in the newly recognized party primary would have to do so well before candidates for any parties make their intention known by declaring their candidacy, pursuant to Okla. Stat. tit. 26, § 5-110, on the first Monday through Wednesday of June of an election year.

The statute permitting candidates for newly recognized parties 15 days to register with the new party is an

exception to Oklahoma's general rule that a candidate must be affiliated with a party for six months before he or she can run for office from that party. Okla. Stat. tit. 26, § 5-105. Before the creation of this exception, the Oklahoma Legislature had not even considered the problem of newly recognized party candidates who could not register as members of the party prior to party recognition. Thus, in 1980, when the LPO first achieved party recognition in Oklahoma, Libertarian candidates for State office were removed from the ballot because it was impossible for them to have been registered with the party for six months. LPO candidates had to seek relief in Court in order to obtain ballot status. *Crussel v. Oklahoma State Election Bd.*, 497 F.Supp. 646 (W.D. Okla. 1980). It was only after the *Crussel* case that the Oklahoma Legislature dealt with the problem it had created by failing to consider the impact of Oklahoma's ballot access, durational political affiliation, and voter registration laws on newly recognized political parties. Prior to the change in Okla. Stat. tit. 26, § 5-105(A), it was simply impossible for a candidate of a newly recognized political party to have been registered with the party for the six months required by the political affiliation rule.

Although Oklahoma has now resolved that problem, the Oklahoma Legislature has still not addressed the problem presented by the workings of Okla. Stat. tit. 26, §§ 1-109, 1-110, 4-112, and 4-119, which make it nearly impossible for voters other than either new voters or candidates of new parties to change their political affiliation voter registration in order to vote in a newly recognized party's primary and primary runoff elections.

If the foregoing voter registration restrictions and limitations on the change of political affiliation make the

LPO's problem in the case at bar considerably more difficult than was the case for the Republican Party of Connecticut in *Tashjian*, the effect of Okla. Stat. tit. 26, § 1-108 as said law impacts the foregoing statutes is an even greater problem. Section 1-108 of the Oklahoma Election Laws for the formation of new political parties currently allows a new political party to turn in a petition containing the names of registered voters wishing to form a new political party totaling 5 percent of the total vote cast in the latest general election either for Governor or President. The deadline for filing such a petition, under current law, is May 1 of an even-numbered year (or May 31 under the old law in effect at the trial of the instant case). The State Election Board is allowed 30 days after the receipt of the petition to determine if there are sufficient signatures to recognize the new political party.

The problem resulting from Okla. Stat. tit. 26, § 1-108 can be demonstrated by imagining the LPO turning in a new petition for political party recognition on May 1, 2008 – the next election in which the President will be chosen. If the State were to take the 30 days allowed to determine the sufficiency of the petition, then it would not be until May 31, 2008, before the LPO would know if it had been recognized as a political party under Oklahoma law. However, Republican, Democratic, and Independent voters in Oklahoma who might wish to register with the LPO after May 31, 2008, would find that they were absolutely prohibited under the election registration laws from changing their party affiliation during the months of June, July, and August. Okla. Stat. tit. 26, § 4-119. Therefore, the only way Republican and Democratic registered voters would be allowed to vote in the LPO primary would be if they also wanted to be Libertarian candidates for office, in

which case they would have 15 days, until June 15, 2008, to change their political party registration.[11]

Of course, the new political party seeking recognition in Oklahoma could try to turn its recognition petitions in significantly before the deadline, but that would further increase the severe burden of Oklahoma's ballot access law (R.T. 229) by requiring the collection of petition signatures even further from the political election season, when political interest is less and the weather is worse. Early petition filing deadlines and bad weather have been recognized by courts as severely impacting ballot access laws, especially severely restrictive ones such as Oklahoma's. *Anderson v. Celebrezze*, 460 U.S. at 792; and *Libertarian Party of Oklahoma v. Oklahoma State Election Bd.*, 593 F.Supp. 118, 121 (W.D. Okla. 1984).[12]

[11] On the other hand, the above scenario under the law in effect at the time of the non-jury trial in this case would be somewhat different, i.e., the deadline for filing the party petition would have been on May 31, when the LPO did file it; the deadline for the State Election Board to determine the sufficiency of the signatures would have been on June 30, and the months in which registered voters could not change their political affiliation unless they wanted to be candidates of the LPO would have been from July 1 at 5:00 p.m. until September 30. Other than making the ballot access laws of Oklahoma more restrictive by a 30 day earlier deadline, the foregoing date changes do not affect materially the instant issues.

[12] It is possible for the State Election Board to take less than the 30 days allowed by law to certify the petition signatures – as was done on June 21, 2000, which afforded nine days for voters who might have learned of the LPO recognition to change their political affiliation (Pet. App. 31). However, there is no guarantee in the future that the State Election Board will be able to complete the certification of the petition signatures in less than the 30 days allowed by Okla. Stat. tit. 26, § 1-108.

In short, Oklahoma makes it virtually impossible for registered Republicans, Democrats, and Independent voters to change their political affiliation to a newly recognized political party in time to vote in its primary election. The particular facts and circumstances of this case are therefore clearly distinguishable from the election laws considered by this Court in *Tashjian* and the considerably more liberal registration laws of the overwhelming majority of states (R.T. 84, 86).

E. Oklahoma Voter Registration Laws, Unlike Those Of Most Other States, Place Severe Restrictions On Registration In Non-Recognized Political Parties As Well As Severely Restricting Voter Registration In A New Political Party After It Has Been Recognized In Oklahoma.

It might be argued the foregoing problems suggested for the primary election of 2008 for the LPO, or any new political party, did not apply to the LPO in the election of 2000 because its voters could have registered as a member of the Libertarian Political Organization in Oklahoma. Unfortunately, Oklahoma Election Law also fails the political organization which becomes a political party through a successful petition pursuant to Okla. Stat. tit. 26, § 1-108. People who register in Oklahoma as members of the Libertarian Political Organization or any other political organization are, in effect, second class registered voters. Unlike individuals who are registered as Republicans, Democrats, or Independents, individual registered voters who have registered as members of the LPO while it is designated under state law as a political organization cannot vote in any primary election and are the only class

of registered voters who are absolutely prohibited from running as candidates for partisan political office. Okla. Stat. tit. 26, §§ 4-112, 4-119, 5-104, and 5-105 (R.T. 56).

For purposes of political party registration, Oklahoma law distinguishes between Republicans, Democrats, and Independents, members of political organizations (e.g., the Libertarian and Reform), and individuals who identify themselves with non-recognized political parties. Individuals who are registered as Republicans and Democrats (i.e., recognized political parties) may file as candidates of their political parties for office and vote in their primaries. Individuals who are registered as Independent voters may run for office under the relatively easy ballot access provided in Oklahoma for Independent candidates. By contrast, individuals who identify themselves with non-recognized political parties may not register in Oklahoma as members of those political parties, but must choose to register themselves as either Republicans or Democrats or Independents. Okla. Stat. tit. 26, § 4-112. However, during those periods of time when political organizations are recognized in Oklahoma (i.e., four years after a political party has been decertified in Oklahoma and not been re-recognized as a political party) members who wish to identify themselves with a political organization are free to register as a political organization registered voter. Okla. Stat. tit. 26, § 4-112.[13]

[13] From 1999 to June of 2000, and from late 2000 to late 2004, there were two political organizations in Oklahoma (viz.: Libertarian and Reform).

The disadvantage that registered members of political organizations suffer in Oklahoma is that they are absolutely barred from running for political office as either an Independent, Okla. Stat. tit. 26, § 5-105(B), or a member of the political organization, or the Republican or Democratic parties. Okla. Stat. tit. 26, §§ 5-104 and 5-105(A). Therefore, by choosing to register as a member of a political organization, an Oklahoma voter will not be able to vote in any primaries or run for political office under any political label. As a result, many individuals who identify themselves with a political organization will register as Republicans, Democrats, or Independents in order to be able to run as a candidate for office when their political organization is not a recognized political party, or simply to avoid having to continually re-register after their political party or political organization has been decertified pursuant to Okla. Stat. tit. 26, § 1-109. As the District Court stated:

> As a factual matter, as has been discussed, the court is in a very poor position to assay the purity of the Libertarian voting electorate because the Libertarian Registration rolls are periodically purged, with the result that, to an inherently unmeasurable extent, voters who have Libertarian political inclinations will either come to rest on the roll of unaffiliated voters or will register with one of the major parties for no reason other than to avoid repeatedly being purged to unaffiliated status. (Pet. App. 62).

Moreover, even a voter who is willing to face the disadvantages of being listed as a member of a political organization runs up against yet another obstacle when the organization gains or regains political party status. At this point, Okla. Stat. tit. 26, §§ 1-109(B) and 1-110(B) require the decertification of the political organization and

the re-registering of all its voters to Independent status. Thus, Oklahoma election law punishes the political organization for becoming a recognized political party by changing the registered voters of the political organization to Independent upon the successful recognition of the political party pursuant to Okla. Stat. tit. 26, § 1-108. In *Rosario v. Rockefeller,* 410 U.S. 752 (1973), and *Storer v. Brown*, at least the voters had a chance to change their registration in advance and stay with their chosen political party.

There can be no question but that the impact of all these restrictions on the associational rights of the LPO is severe. After all, it is the State of Oklahoma which forces the LPO, in order to obtain ballot access, to meet what can only be characterized as one of the most restrictive ballot access laws in the country. Okla. Stat. tit. 26, §1-108 (R.T. 229). Further, Oklahoma has a very restrictive retention law which serves to remove the LPO from the Oklahoma ballot at the end of every Presidential election. Okla. Stat. tit. 26, §1-109. Finally, it is the State of Oklahoma which forces the LPO to choose its party nominees through a political party primary system. Okla. Stat. tit. 26, §1-102; Okla. Const. art. 3, §3. These features of Oklahoma law, combined with the restrictions the law places on voters' ability to register as LPO members once the LPO surmounts the obstacles to obtaining party status, together prove that if LPO primaries are limited to registered LPO members and Independents, very few of the voters who would like to participate will be able to do so.

In contrast to Oklahoma, California allows minor party voters some constancy as to voter registration. One of the differences between the LPO and the California Libertarian Party is the freer, more open access to voter

registration in California. In California, not only is ballot access and ballot retention for minor political parties easier (R.T. 89-99; J.A. 30-36, 41-43, 80-83), but voters may register as members of any political party. Thus, the Libertarian Party of California is relatively large – about 30 times larger than the LPO if registration is adjusted for population (R.T. 95-96). On the other hand, since Libertarians are rarely allowed to register as Libertarians in Oklahoma and there are other restrictions on changing registration, a large number of Libertarians are either registered as Independents or as Republicans and Democrats (Pet. App. 48, 62).

Therefore, while the California Libertarian Party might wish to exclude Independents and members of other parties from voting in its party primary because there has been ample opportunity for voters to register as Libertarians, in Oklahoma the LPO wishes to invite Independents and Republicans and Democrats to vote in its primary election because many of those Independent, Republican, and Democratic voters have not had an opportunity – as they have in California – to register as Libertarians. Further proof of the effects of Oklahoma's laws on the creation and maintenance of a Libertarian voting pool can be found in the evidence presented at the trial below regarding Libertarian voter registration in other states. While Oklahoma on June 30, 2000, had a total of 360 registered Libertarians, Kansas, a somewhat smaller state, had 9,976 registered Libertarians, California in October of 2002 had 89,736, and Arizona, a state slightly larger than Oklahoma, had approximately 14,000 registered Libertarians (Pl. Ex. 3, J.A. 35-36; Def.'s Ex. 9, J.A. 81; and R.T. 155). Because minor parties in Oklahoma do not enjoy stability of legal recognition they have small

memberships (J.A. 35; R.T. 89, 91, 93, 95-99). Under more liberal registration laws voter registration in the LPO would likely be in excess of 12,000, based on a comparison with other states.[14]

II. OKLAHOMA DID NOT PRESENT IN THE TRIAL BELOW ANY LEGITIMATE STATE INTEREST WHICH MAKES IT NECESSARY TO BAN A PARTY-OPTION OPEN PRIMARY.

A. A Correct Reading Of Footnote 13 In This Court's Decision In *Tashjian* Calls For An Analysis Of The Particular Facts Involved In Each Case And Not The Adoption Of A Rigid Rule Allowing Or Disallowing A Party-Option Open Primary.

In many ways, this case has been an extended argument over the meaning, interpretation, and application of footnote 13 in the *Tashjian* case, 479 U.S. at 224, n. 13. While the Petitioners and the Amici in the case at bar seem to think that footnote 13 in *Tashjian* allows the State, in the pursuit of political stability, to forbid political parties from opening up their primaries, and that the holding of the Tenth Circuit in *Beaver* would allow political parties at their whim to open their primaries to all registered voters. But footnote 13 has been properly interpreted and applied by both the Tenth Circuit in *Beaver* and the First Circuit in *Cool Moose Party v. State of Rhode Island*,

[14] Oregon, with a population close to Oklahoma's, has 16,236 registered Libertarians. Richard Winger, 2004 October Registration Totals, 20 Ballot Access News, No. 8, p. 3 (Dec. 1, 2004), www.ballot-access.org.

183 F.3d 80 (1st Cir. 1999) in a cautionary and conservative manner. In order to properly understand *Tashjian's* footnote 13, it is important to consider the entire footnote and not just the first half of it as given the Court in the Brief of Petitioners.[15] As the Court said:

> Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in *Storer v. Brown*, 415 U.S. 724 (1974), and *Rosario v. Rockefeller*, 410 U.S. 752 (1973), were designed to prevent. We have observed on several occasions that a State may adopt a "policy of confining each voter to a single nominating act," a policy decision which is not involved in the present case. See *Anderson v. Celebrezze*, 460 U.S. 780, 802, n. 29 (1983); *Storer v. Brown*, supra, at 743. The analysis of these situations derives much from the particular facts involved. "The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.'" *Anderson v. Celebrezze, supra*, at 789-790 (quoting *Storer v. Brown, supra*, at 730). *Tashjian*, 479 U.S. at 224, n. 13.

[15] Both the District Court and Tenth Circuit in *Beaver v. Clingman*, as well as the First Circuit in *Cool Moose*, also only restated the first half of footnote 13 from *Tashjian*.

First, this Court should consider the reference in the second sentence of footnote 13 to "a different combination of considerations." The case at bar should not be considered in general and broad terms as the Petitioners and Amici would have this Court do, but rather in the context of the minor party involved (the LPO), the particular ballot access, ballot retention, and voter registration laws of Oklahoma as they impact the LPO, and the proof presented at trial by the State to try to justify its ban on a party-option open primary. This case does not present the false dilemma of either party-option open primary only or state prohibition of a party-option open primary only. Respondents would submit to the Court that the "different combination of considerations" to be analyzed are that the LPO has not had continuous existence under the election laws of Oklahoma, has had to try to meet ballot access laws which are among the most restrictive in the nation (R.T. 229), is faced when it does achieve ballot status in Oklahoma with losing political party status after each presidential election, has a limited time in which voters may register as Libertarians – particularly after the party has been recognized, an almost immediate ban on changes in political affiliation for the next three months covering the candidate filing period, party primary, and runoff primary elections, the proof at the trial that it was very unlikely that any primary elections of the major parties would actually be changed (R.T. 120-121, 191-192, 217-220, 224-226), and that it was paternalistic of the State to even believe that keeping the Libertarian primary closed would be in the best interest of the major political parties because their candidates would still be chosen by the free choice of those individuals who were registered with the major political parties and actually chose to vote in their party primaries.

The next factor to consider in analyzing footnote 13 in *Tashjian*, is the comment in the third sentence of the footnote that a party opening up its primary to voters registered with other political parties would threaten the other parties with the disorganization effects which the statutes in *Storer v. Brown* and *Rosario v. Rockefeller* were designed to prevent. However, the question arises as to what were the "disorganization effects" which the aforesaid statutes were designed to prevent. Certainly, those effects were not the same as would result in a few registered voters of major parties accepting an invitation to vote in a minor party's primary. After all, *Storer* and *Rosario* were cases involving election statutes which sought to protect political parties from the "disorganization effects" that could have resulted from sore losers and unsuccessful party candidates who then sought to run as Independent candidates, and from cross-over voters who sought to vote in a political party's primary, against the political party's rules, for the purpose of raiding and picking a weak candidate for the political party of which the cross-over voters were not members.

Rosario, and also this Court's summary affirmation in *Nader v. Schaffer*, 417 F.Supp. 837 (D. Conn. 1976), *summarily aff'd.*, 429 U.S. 989 (1976), involved nonmembers of political parties who had sought to participate in another party's affairs against the will of that party. Therefore, this Court found that the nonmembers' desire to participate was "overborne by the countervailing and legitimate right of the party to determine its own membership qualifications." *Tashjian*, 479 U.S. at 216, n. 6. As this Court said in *Tashjian*:

> It is this element of potential interference with the rights of the Party's members which

> distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. . . . These situations are analytically distant from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers. See generally Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale L.J., 117 (1984). *Tashjian*, 479 U.S. at 216, n. 6.

Thus, the disorganization effects considered in footnote 13 are not the same as the alleged problems of the LPO "draining" voters out of the major parties' primaries in Oklahoma.[16]

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[16] "Draining" is referred to by the Petitioners as the inverse activity of "raiding" (Pet. Brief 21). In *California Democratic Party v. Jones*, this Court noted the skepticism over whether raiding ever exists in reality. *Id.* at 579; see also, *LaFollette*, 450 U.S. at 122, n. 23. The concept of draining as a concerted effort seems even more far-fetched and bizarre as a concern of the State interest to preserve political stability and the integrity of the political process. Rather, it seems an effort by the State paternalistically to try to protect the two major parties from losing voters who would not be in the mainstream of their political parties anyway. Losing Republicans or Democrats who would rather vote Libertarian would hardly cause the Republican and Democratic nominees to be "a nominee who is not an adherent to the party ideas. . . . " (Pet. Brief 26). The foregoing, of course, overlooks the fact that the idea as testified to by Dr. Darcy that perhaps 10 percent of the Republicans and Democrats would vote in the Libertarian primary in Oklahoma is absurd. As the record clearly demonstrated, in 40 out of 41 open primaries in the country, the Libertarian party received one percent or less of the total number of all voters who voted in all primaries (Pet. App. 40; R.T. 117-118, 224-226). With the LPO unable to

(Continued on following page)

In considering the above interpretation of footnote 13, Judge Berdon of Connecticut commented on the meaning of footnote 13 and deserves to be quoted at length:

> If Justice Marshall meant that he would draw the *Tashjian III* line by allowing the state to prohibit the party from inviting voters affiliated with another party to vote in its primary, then this *dicta* may have been made without thoughtful distinction between a challenge to state regulations that comes from an individual, and one that comes from a party.
>
> In support of this reference to the "disorganization effects," Justice Marshall refers to *Storer v. Brown* and *Rosario v. Rockefeller*. *Storer* and *Rosario* must be put in their proper perspectives – both cases involved challenges to statutes by individuals, and in neither case was there a contradictory party rule. In *Storer*, the court upheld a California statute prohibiting a person from running as an independent candidate for elective office if he or she had been enrolled in a party within the previous year. The *Rosario* court upheld a waiting period before a person could vote in a primary of one party after leaving the enrollment of another party.
>
> Just as the alleged "disorganization effects" could not stand against the party's rule in *Tashjian III*, so must it fail as justification for a state regulation prohibiting the party from inviting persons affiliated with another party. As to the political party who invites the voter formerly

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get anywhere near 10 percent of the vote in Oklahoma elections, it is an incredible stretch to believe it would ever draw more than a small number of Republicans and Democrats.

affiliated with another party, the state regulation would amount to the prevention of disruption from within the party, which is beyond the state's power. Concededly, there could be "disorganization effects" on the party with whom the voter is formerly affiliated; but these disorganization effects pale in the light of the importance of the political party's ability to seek adherence or members. "Under these circumstances, the views of the State, which to some extent represent the views of the one political party transiently enjoying majority power, as to the optimum methods for preserving party integrity lose much of their force." Allowing a voter registered in one party to vote in the primary of another party at its invitation fosters a competitive spirit between the parties and is consistent with American political thought and practice.[17]

The next sentence in footnote 13 in *Tashjian* applies to neither the fact situation in *Tashjian* or the one found in the case at bar. A state surely has a right to limit each voter to a single nominating act. Just as this Court found that the relief requested in *Tashjian* by the Republican party would not have allowed a primary voter to vote in more than one primary or commit more than one nominating act at a time, so too the relief requested by the LPO in this case does not include "fusion voting," but only that a voter make a choice as to whether to participate in the Libertarian primary or that of the political party in which they are currently registered. In fact, the parties in the case below stipulated that if the LPO were allowed to open

[17] Robert I. Berdon, The Constitutional Right of the Political Party to Chart Its Own Course, Defining Its Membership Without State Interference, 22 Suffolk U. L. Rev. 933, 967-968 (1988).

its primary election to all voters at the individual voter's choice, each voter would only be able to receive one ballot selection in order to cast his or her vote (Pet. App. 34). Therefore, as in this Court's decision in *Tashjian*, the state's right to allow only a single nominating act is not involved in the instant case.[18]

Finally, the last two sentences of footnote 13 in *Tashjian* stress that the decision of the Court in the foregoing situations must consider the "particular facts involved." Therefore, rather than the false dilemma created by the Petitioners that the choice is between allowing a political party at its whim to open its primaries to voters of other political parties or allowing a state always to ban party-option open primaries, the last two sentences of footnote 13 in *Tashjian* caution that each case must be looked at individually. Were the election laws or parties involved different in the case at bar, then it might well be that the results would be different. However, it is the uniqueness of the LPO's situation under Oklahoma Election Law which calls for the affirming of the Tenth Circuit's decision in *Beaver*.

[18] The State's right to limit a voter to a single nominating act is similar to the State's right upheld in *Timmons v. Twin Cities Area New Party*, supra, which required a candidate to make a single choice as to which party he wished to be the nominee of and prevented another political party from undertaking a simultaneous nomination of the candidate. The voter in the instant case or the candidate in *Timmons* must make a single choice, viz.: which primary to vote in or which party to be a candidate of. *Timmons* is not in conflict with the case at bar.

B. As Applied To The Libertarian Party Or Newly Recognized Political Parties, Oklahoma's Ban On Party-Option Open Primaries Is Neither Reasonable Nor Politically Neutral.

In Oklahoma, there are significant differences as to the effect of the election laws on the major parties and a small political party such as the LPO. As this Court has recognized the " . . . fact is that there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other." *Jenness v. Fortson*, 403 U.S. 431, 441 (1971). As already explained, Oklahoma's rigid ballot access and voter registration laws, while having little or no effect on the major parties, combine to limit drastically the number of registered Libertarians eligible to vote in the primary election in those years when the LPO succeeds in obtaining recognition as a party.

While the District Court and the Petitioners seem to think that the election laws in Oklahoma are nondiscriminatory, the fact of the matter is that "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness v. Fortson*, 403 U.S. at 442. The interest of the State is not so much political stability and integrity, but the protection of the status quo. As the District Court noted, "where statutory law is concerned, the state is the creature of the parties in power, e.g., *Williams v. Rhodes*, 393 U.S. 23, 31-32 (1968), and is thus a bit suspect as a disinterested rule maker." (Pet. App. 67.) Further, this Court commented on the problem of major party control of legislative decisionmaking in *Anderson:* "Even though the drafting of election

laws is no doubt the handiwork of the major parties that are typically dominant in state legislatures, it does not follow that the particular interests of the major parties can automatically be characterized as legitimate state interests." *Anderson v. Celebrezze*, 460 U.S. at 803, n. 30.

Therefore, as this Court has noted "because the interests of minor parties and independent candidates are not well represented in state legislatures, the risk that the First Amendment rights of those groups will be ignored in legislative decisionmaking may warrant more careful judicial scrutiny." *Id.* at 793, n. 16. In *Anderson*, this Court particularly noted that "Ohio's asserted interest in political stability amounted to a desire to protect existing political parties from competition. . . . " *Id.* at 801. "Competition in ideals in governmental policies is at the core of our electoral process and of the First Amendment freedoms." *Id.* at 802. As this Court went on to say, "we did not suggest that a political party could invoke the powers of the State to assure monolithic control over its own members and supporters. Political competition that draws resources away from the major parties cannot, for that reason alone, be condemned as 'unrestrained factionalism.'" *Id.* at 803.

Oklahoma's inattention to the needs of minor parties is most strikingly evident in the obstacles the State has placed in the way of voters who wish to register and vote in the primary of a newly recognized party. Other states, e.g., New Hampshire, make provision for voters registered as Independents and as members of other political parties to have the opportunity to vote in the primary of a newly recognized political party – as occurred for the newly recognized Libertarian party in 1992 (R.T. 124-125). (See N.H. Rev. Stat. Ann. § 659.14(I) (2004)). If Oklahoma had

a statute similar to the New Hampshire statute, or even if this case involved an attempt by the Oklahoma Democratic or Republican parties to have a party-option open primary, the case at bar would be a far different one than we are confronted with herein. The Republicans and Democrats in Oklahoma do not have the LPO's problem because of their long-standing recognition and the ability of voters to register with them and to maintain their registration (or switch it to the other party) so that the voters may vote in the political primary that they desire. The Republicans and Democrats and their potential voter converts have opportunities which the LPO and any other newly recognized political party in Oklahoma simply do not have.

C. This Case Is Not Analogous To *Timmons v. Twin Cities Area New Party*.

There are several major distinctions between this case and *Timmons v. Twin Cities Area New Party* which render *Timmons* inapplicable here. *Timmons* disallowed the New Party from using the nominee of another political party as its nominee. As the Court said in *Timmons*, the laws in question:

> . . . are silent on parties' internal structure, governance, and policymaking. Instead, these provisions reduce the universe of potential candidates who may appear on the ballot as the party's nominee only by ruling out those few individuals who both have already agreed to be another party's candidate and also, if forced to choose, themselves prefer that other party. *Id.* at 363.

Thus, *Timmons* would be truly analogous to this case only if the LPO were asking that Oklahoma voters who are

registered as Republicans and Democrats be allowed to vote in both their own party primary and the LPO primary. But this case does not involve "fusion primary voting" – i.e., voters voting at the same primary election in both their own party primary *and* the LPO primary.

As opposed to the laws challenged in *Tashjian* and *Eu v. San Francisco Democratic Committee*, 489 U.S. 214 (1989), Minnesota's law against fusion candidates did not involve "regulation of political parties' internal affairs and core associational activities." *Timmons*, 520 U.S. at 360. In this case, the LPO is only asking that major party voters have a choice to choose their own party *or* the LPO – a party which Republicans and Democrats have had limited or next to no chance to register in.

Another distinction between *Timmons* and this case is that in *Timmons* – despite the Supreme Court's ruling disallowing dual party nominations – the candidate would still be on the ballot and all voters in the state would still be able to vote for the candidate in the general election. In this case, the Republican and Democratic voters are absolutely prohibited from voting in the LPO primary under the current law. Of course, another important distinction is that the Minnesota of the *Timmons* case is an open primary state: Minnesota voters can vote in any primary of their choice since there is no political party registration of voters in Minnesota.[19]

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[19] Testimony in the record in the case below was that there were 29 states and the District of Columbia which allowed voters to register as members of political parties, while 21 states had voter registration without allowing registration by political party (R.T. 84). In regard to the 29 states which allowed registration by political parties, 26 states provided registration for the political party of the voter's choice, while

(Continued on following page)

While the District Court reasoned that " . . . in the case at bar, the rule contended for by the Plaintiffs would be applied to the [LPO] by consent and to the other parties without their consent," (Pet. App. 69) the District Court once again confuses the Republican and Democratic parties with the individual party voters. Not only is there no evidence in the case at bar that the Republican and Democratic parties of Oklahoma have any objection to their individual members accepting an invitation to vote in another party's primary (as evidenced by the failure of both party Chairmen to appear at the trial below – J.A. 100; R.T. 242), but it should be further considered that the Republican and Democratic parties through the State of Oklahoma freely let their members not vote in their own primary elections. Certainly the allure of "going fishing" on Election Day is greater for Republicans and Democrats than the LPO primary.

The District Court stated that the "Court, in *Timmons,* answered the New Party's complaint by noting that the New Party was free to attempt to persuade the candidate to switch parties [and that] practical remedy is equally available here. . . . " (Pet. App. 71). However, as has been demonstrated herein, while the candidate of the Democratic-Farmer-Labor Party in *Timmons* could have switched to and become the New Party's candidate, in this case it is virtually impossible for Republicans and Democrats in Oklahoma to switch in time to vote as registered members in a primary of a newly recognized political

three states did not (R.T. 84). In fact, in several states, including California, Delaware, and Louisiana, a new political party can gain recognition and ballot status by having a certain number of voters register with the political party seeking party recognition (R.T. 86).

party. Nothing could be more revealing as to the misapplication of the *Timmons* case to the issues in this case than the language used in the District Court's opinion that " . . . the fact that a state may bar one party from poaching another party's candidates without violating the First and Fourteenth Amendments possibly suggests the state may bar a party from poaching another party's primary election voters." (Pet. App. 71). The use of the term "poaching" reminds one that in poaching a hunter captures or kills an animal, but doesn't extend an invitation to the animal to join the hunter as a captive or victim. Because the LPO would not be forcibly taking (as a hunter would poach) the voters of another party, but would instead extend an invitation, the distinction between this case and this Court's decision in *Timmons* is clear. The use by the District Court in its decision and the Petitioners in their Brief of the term "poaching" speaks volumes about a certain view of a political party's control over and relationship to its registered voters. The Tenth Circuit sets forth a better view:

> By finding protection against poaching of other parties' voters to justify the regulations at issue, the district court effectively would add a new associational right that has to this point been absent from constitutional discussion – the ability of a group to harness and control the associational opportunities of its members. *Beaver,* 363 F.3d at 1061 (Pet. App. 22)

While this Court has previously held that a state may not prevent a political party from opening up its primary election to Independent voters, *Tashjian,* this Court has not yet specifically addressed the issue of whether a state may prevent a political party from conducting a totally open primary election if the political party so chooses. As

noted in *Cool Moose*, this Court has held that the freedom to associate with others for the advancement of political beliefs and ideas is a form of "orderly group activity" protected by the First and Fourteenth Amendments and "[t]he right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Cool Moose,* 183 F.3d at 82, quoting, *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973).

The fact situation and law in Rhode Island in the *Cool Moose* case is somewhat similar to the fact situation and law in this case in Oklahoma. Like Rhode Island, Oklahoma has a semi-closed primary system that allows political parties to have the choice of inviting registered voters who are Independents to vote in their primary election, but not registered voters from other parties. However, Rhode Island, unlike Oklahoma, allows voters to register as members of unrecognized political parties. In fact, under the registration laws of Rhode Island, 1,010 Rhode Island registered voters registered as members of the Cool Moose party. (Def. Ex. 9, J.A. 39). Even so, the Court said in *Cool Moose*, quoting *Tashjian*:

> The statute here places limits upon the group of registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action and hence political power in the community. *Cool Moose Party v. State of Rhode Island, supra*, at 85, quoting *Tashjian v. Republican Party of Connecticut, supra*, at 215-216.

Timmons, by contrast, did not limit or prevent the choice of the candidate to join the New Party as its nominee.

III. UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, OKLAHOMA'S BAN ON A PARTY-OPTION OPEN PRIMARY IS UNCONSTITUTIONAL UNDER EITHER STRICT OR INTERMEDIATE SCRUTINY.

Contrary to the pronounced exaggerations and broad oversimplifications of Petitioners' interpretation of the holding of the Tenth Circuit below, both the Tenth Circuit in *Beaver* and the First Circuit in *Cool Moose* exercised caution in considering the justifications put forth by the State and the proof presented in the record in determining whether a ban on a party-option open primary was constitutional. Neither Court of Appeals held that a political party could always, under any circumstances, open up its primary to members of other parties. Rather, in basing its decision on the record before it, the Tenth Circuit in *Beaver* found that the State had failed to make its case that a party-option open primary for the LPO would impair compelling interests in political party integrity and political stability just because it might possibly result in a few changed election results in the primaries of the major parties. *Beaver*, 363 F.3d at 1060 (Pet. App. 20).

The Petitioners misread the decision in *Tashjian* to mean that a party-option open primary may never be permitted. In a similar vein, Petitioners seem to believe that the decision of the Tenth Circuit in *Beaver* will always mandate the use of party-option open primaries. Actually, the Petitioners are wrong on both counts. In fact, *Tashjian* did not rule on whether a party has a right to open its primary to members of other parties. Rather, footnote 13

in *Tashjian* is *dicta* and simply suggests that a Court exercise caution in considering precisely what is the compelling state interest urged by the State and whether the State has offered sufficient proof that forbidding a party-option open primary is necessary to protect that interest. Just as the State in *Tashjian* failed to make its case in the record, so the record in the case below (as well as the record in *Cool Moose*) did not support the alleged interest of the state in banning the LPO from inviting registered members of other political parties to vote in its primary election. Therefore, the Tenth Circuit was correct in its ruling based on the particular circumstances, facts, and record in the case below. Rather than disregarding the language of *Tashjian* as Petitioners contend, the Tenth Circuit specifically followed the guidance and teaching of *Tashjian* in considering its decision.

Additionally, Petitioners are wrong in believing that the decision of the Tenth Circuit will always mandate the use of a party-option open primary. Not only is the decision below limited to the facts involving the LPO and its request for a party-option open primary, but this Court's decision in *Jones* does not mandate an across-the-board decision one way or the other on the party-option open primary. Instead, as the Tenth Circuit noted, this case lies squarely between *Tashjian* and *Jones*. Just as *Tashjian* had required the Connecticut regulation in question to be narrowly tailored to advance a compelling state interest, *Tashjian*, 479 U.S. at 217, *Jones* also required California to demonstrate that its regulations were narrowly tailored to serve a compelling state interest and on the record found that none of the interests was sufficiently compelling. *Jones*, 530 U.S. at 581-582, 586. Thus, instead of misreading this Court's decision in *Jones*, it is clear that

the Tenth Circuit carefully considered *Jones* and *Tashjian* and looked to the record in the case below in reaching its decision.

The Tenth Circuit also applied the correct standard in considering the issues in the case at bar. The Tenth Circuit found that when a state attempts to regulate and control the boundaries which a political party wishes to exercise for its own primary election, the burden on associational rights is severe. In citing a number of decisions of this Court, the Tenth Circuit noted below that when states attempt to restrict political parties from defining the bounds of their own association, this Court closely scrutinizes the State's attempt at regulation of the political party's rights to political association. *Beaver*, 363 F.3rd at 1056; citing, *Jones*, 530 U.S. at 582; *Eu v. San Francisco Democratic Comm.*, 489 U.S. at 225; *Tashjian*, 479 U.S. at 225; *LaFollette*, 450 U.S. at 124, and *Cousins v. Wigoda*, 419 U.S. 477, 489 (1975). The Tenth Circuit began its review of the statutes in question by using the balancing test of *Anderson v. Celebrezze*, just as the First Circuit did in *Cool Moose*.

> A court . . . must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interest put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. *Anderson v. Celebrezze*,

supra, at 789. *Beaver,* 363 F.3d at 1055 (Pet. App. 10-11).

The Tenth Circuit considered this Court's holdings that a reviewing Court should consider whether or not the burden is severe – requiring that the regulation be narrowly tailored and advance a compelling State interest, or whether the burden is less severe – in which case important regulatory interests are generally enough to justify the regulation. *Timmons v. Twin Cities Area New Party,* 520 U.S. at 358-359; and *Burdick v. Takushi*, 504 U.S. at 434 (Pet. App. 11).

While the Petitioners and Amici in their Briefs seem to feel that the Tenth Circuit has basically ended the power of states under any record to prevent party-option open primaries, both the Tenth Circuit in this case and the First Circuit in *Cool Moose* were models of restraint in limiting their decision to the facts and circumstances presented in the records in the District Court. This Court has acknowledged "the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party select[s] a standard-bearer who best represents the party's ideologies and preferences." *Jones*, 530 U.S. at 575. The selection of a standard-bearer who best represents the LPO's ideologies and preferences would have best been served if Republicans and Democrats who were Libertarian-oriented and who did not have an equal opportunity to change their registration in time to vote in the LPO primary could vote in the LPO primary.

While the District Court correctly found that the State's argument that it was trying to protect the LPO from raiding and swamping by voters from other political

parties was both unpersuasive and essentially a paternalistic justification for Oklahoma's present semi-closed primary system, the District Court overlooked an equally important question: What could be more paternalistic than protecting the Republican and Democratic parties in Oklahoma from having a few of their registered voters exercise their individual free choice by voting in the LPO primary? So what if some individual Republicans and Democrats defect to vote in the Libertarian primary – so much the better for "common principles" within the Republican and Democratic parties.

Indeed, the Republican and Democratic parties would be more likely to have standard-bearers who best represented their parties' ideologies and preferences if their party could be rid of members who would have rather voted in the LPO's primary but did not have the chance. As has been shown above, a party-option open primary would not only aid the LPO, but would not harm the major political parties. Like-minded voters would be drawn to the political party that they most associated with if they had the opportunity to make the choice freely in an equal manner, no matter which political party they were drawn to. The Tenth Circuit cited to the political stability shown by party-option open primary states like Utah and Alaska in its decision[20], and, as noted above, New Hampshire has also found a way to provide reasonable and non-discriminating treatment to newly recognized political parties, their primary elections, and those voters registered

[20] See Utah Code Ann. §§ 20A-3-104.5 and 20A-9-403(2)(a) and Alaska Stat. §§ 15.25.010, 15.25.014, and 15.25.060; *O'Callaghan v. State*, 6 P.3d 728, 732 (Alaska 2000), as shown in the record below (R.T. 109-114).

with other political parties who might wish to switch to the new political party in a timely manner. N.H. Rev. Stat. Ann. § 659.14(I)(2004).

It is important to note that there would have been no case and controversy in *Jones* had the Democratic, Republican, Libertarian, and Peace and Freedom Parties not objected to the blanket primary set up under the law of California. In this case, although the District Court asserted that a party-option open primary would affect other political parties, neither the Republican nor Democratic parties in Oklahoma intervened in the case. Not only does it appear that neither the Republican nor Democratic parties objected to a party-option open primary, but it is paternalistic speculation to imagine that a party-option open primary would adversely affect the other parties. After all, those party members who choose to vote in the primary will always choose the party nominees, even if a few might choose to vote in the LPO primary. It is for each individual political party, not for the state, to decide what is in the best interest of the parties.

As this Court stated in an opinion written by Justice Scalia:

> What we have not held, however, is that the processes by which political parties select their nominees are, as respondents would have it, wholly public affairs that States may regulate freely. To the contrary, we have continually stressed that when State's regulate parties' internal processes they must act within limits imposed by the Constitution. *Jones,* 530 U.S. at 572-573.

As the Court went on to note " . . . when the election determines a party's nominee it is a party affair as well,

and, as the cases to be discussed in the text demonstrate, the constitutional rights of those composing the party cannot be disregarded." *Id.* at 573, n. 4.

In his concurring opinion in *Jones*, Justice Kennedy makes it quite clear that it is the party's choice and not the State's choice as to how the political party will exercise its political associational freedoms under the First Amendment with respect to the limits of participation in its primary election.

> It may be that organized parties, controlled – in fact or perception – by activists seeking to promote their self-interests rather than enhance the party's long term support, are shortsighted and insensitive to the views of even their own members. A political party might be better served by allowing blanket primaries as a means of nominating candidates with broader appeal. Under the First Amendment's guarantee of speech through free association, however, this is an issue for the party to resolve, not for the State. *Id.* at 587 (Kennedy, J., concurring).

It is especially important to note that nowhere in *Jones* does this Court indicate that other political parties, through the mechanism of state government, can prevent a party from opening up its primary election to voters registered in other political parties if it so chooses. It follows by logical extension that Oklahoma is limited under the First Amendment when it attempts to constrict expanded voter participation favored by a political party for its own primary election.

> When the State seeks to regulate a political party's nomination process as a means to shape and control political doctrine and the scope of

> political choice, the First Amendment gives substantial protection to the party from the manipulation. In a free society the State is directed by political doctrine, not the other way around. *Jones,* 530 U.S. at 590. (Kennedy, J., concurring)

As was noted by the First Circuit in *Cool Moose*, the Supreme Court's decision in *Tashjian* "does not purport to control [the instant issue], and in fact suggests that a state may well be able to offer sufficiently weighty rationales in support of a statute prohibiting affiliated voters from participating in the primary of another party." *Cool Moose,* 183 F.3d at 86. Nonetheless, the LPO would submit to the Court that the State has not offered "sufficiently weighty rationales" in order to defeat the fundamental rights of political association and free speech associated with the LPO and the individual voter's choice. All the State's alleged compelling interests are mere paternalistic conclusions and speculations that are not backed up by facts or expert testimony as they apply to Oklahoma law and the LPO.

The Petitioners' expert witness showed that voting patterns for registered members of the major political parties in Oklahoma is far different from the voting patterns of Independent voters. However, Dr. Darcy's conclusions from his studies (suggesting an absurdly high participation rate by major party voters in the LPO primary) reach incorrect conclusions because he relies on incorrect assumptions and models. It was for similar reasons that Dr. Darcy's opinions and conclusions were discounted and held to be not particularly relevant by a Trial Court in an earlier case. *Graves v. McElderry,* 946 F.Supp. 1569, at 1575-1576 (W.D. Okla. 1996).

The District Court claimed that the " . . . challenged legislation is not aimed at minor parties in general, as in ballot access cases, or at the LPO in particular." The District Court therefore concluded that the challenged laws were politically neutral (Pet. App. 60-61). The District Court then cited this Court's decision in *Burdick v. Takushi, id.* at 434 for the proposition that the challenged laws herein are "nondiscriminatory restrictions which the State's important regulatory interests are generally sufficient to justify." However, the *Burdick* case, while standing for the proposition the District Court says it does, did not concern an optional open primary, but the allowance of write-in voting for all voters. The reason why the regulation upheld in *Burdick* was considered neutral was because the write-in voting ban would apply to all elections and not just party primaries for parties which requested it.

Okla. Stat. tit. 26, § 1-104 is not neutral because it only affects the LPO which is the only political party in Oklahoma that has chosen to open up its party primary. Further, the LPO periodically has all of its registered voters purged and changed to Independent status whenever the Party fails to maintain its political party status in Oklahoma, "with the result that, to an inherently unmeasurable extent, voters who have Libertarian political inclinations will either come to rest on the roll of unaffiliated voters or will register with one of the major parties for no reason other than to avoid repeatedly being purged to unaffiliated status." (Pet. App. 62). Once again, the LPO is not in the same position as the major parties because of the constant registration changes for its members as well as it being the one party that is actually affected by Oklahoma's ban on a party-option open primary. Would it

not be more in the interest of the major parties that only persons loyal to those parties vote in their primaries? If a person is registered as a Republican or Democrat and is so uninterested or uninspired by those parties that he or she would rather vote in the LPO primary, then having that person vote in the LPO primary would not hurt the major party at all. In any event, the State needs to prove something more than mere speculation and paternalistic conclusions to justify a ban on an open primary for the LPO in the record presented in this case.

CONCLUSION

Wherefore, for all the foregoing reasons, the decision of the United States Court of Appeals for the Tenth Circuit should be affirmed.

Respectfully submitted,

JAMES C. LINGER
Counsel of Record
1710 South Boston Avenue
Tulsa, Oklahoma 74119-4810
(918) 585-2797
(918) 583-8283 Facsimile

Counsel for Respondents

RELEVANT STATUTES

OKLA.STAT. TIT. 26, §1-102. PRIMARY ELECTIONS
(Laws 1974, c. 153, § 1-102, operative Jan. 1, 1975;
Laws 1977, c. 134, § 2.)

A Primary Election shall be held on the fourth Tuesday in August of each even-numbered year, at which time each political party recognized by the laws of Oklahoma shall nominate its candidates for the offices to be filled at the next succeeding General Election, unless otherwise provided by law. No candidate's name shall be printed upon the General Election ballot unless said candidate shall have been nominated as herein provided, unless otherwise provided by law; provided further that this provision shall not exclude the right of a nonpartisan candidate to have his name printed upon said General Election ballots. No county, municipality or school district shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such primary election.

OKLA. STAT. TIT. 26, § 1-103.
RUNOFF PRIMARY ELECTIONS
(Laws 1974, c. 153, §1-103, operative Jan. 1, 1975;
Laws 1977, c. 134, § 3.)

If at any Primary Election no candidate for the nomination for office of any political party receives a majority of all votes cast for all candidates of such party for said office, no candidate shall be nominated by said party for said office, but the two candidates receiving the highest number of votes at said election shall be placed on the official ballot as candidates for such nomination at a Runoff Primary Election to be held on the third Tuesday of September of the same year. No county, municipality or

school district shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such Runoff Primary Election.

OKLA. STAT. TIT. 26, § 1-108.
FORMATION OF NEW POLITICAL PARTIES
(Laws 1974, c. 153, § 1-108, operative Jan. 1, 1975;
Laws 1985, c. 269, § 1.)

A group of persons may form a recognized political party at any time except during the period between July 1 and November 15 of any even-numbered year if the following procedure is observed:

1. Notice of intent to form a recognized political party must be filed in writing with the Secretary of the State Election Board at any time except during the period between March 1 and November 15 of any even-numbered year.

2. After said notice is filed, petitions seeking recognition of a political party, in a form to be prescribed by the Secretary of the State Election Board, shall be filed with said Secretary, bearing the signatures of registered voters equal to at least five percent (5%) of the total votes cast in the last General Election either for Governor or for electors for President and Vice President. Each page of said petitions must contain the names of registered voters from a single county. Petitions may be circulated a maximum of one (1) year after notice is filed, provided that petitions shall be filed with said Secretary no later than May 31 of an even-numbered year. Said petitions shall not be circulated between May 31 and November 15 of any even-numbered year.

3. Within thirty (30) days after receipt of said petitions, the State Election Board shall determine the sufficiency of said petitions. If said Board determines there are a sufficient number of valid signatures of registered voters, the party becomes recognized under the laws of the State of Oklahoma with all rights and obligations accruing thereto.

OKLA. STAT. TIT. 26, §4-103.
PERSONS WHO WILL BECOME
QUALIFIED ELECTORS – TIME FOR REGISTRATION
(Amended by Laws 1997, c. 176, §5, eff. Nov. 1, 1997.)

Any person who will become a qualified elector during the sixty (60) days before the next ensuing election at which he could vote shall be entitled to become a registered voter of the precinct of his or her residence not more than sixty (60) and not less than twenty-four (24) days prior to said election.

OKLA. STAT. TIT. 26, §4-119.
CHANGE OF POLITICAL AFFILIATION
(Laws 2000, c. 358, § 7, eff. July 1, 2000.)

Any registered voter may change his or her political affiliation by executing a form prescribed by the Secretary of the State Election Board at any time prescribed by law for registration transactions except during the period from 5:00 p.m. on July 1 through 5:00 p.m. on September 30 in any even-numbered year. Information given by the voter shall be under oath. The county election board secretary in the applicant's county of residence shall hold any such application for political affiliation change received by the State Election Board, any county election board, any agency designated to accept voter registration applications

or any motor license agent as part of a driver's license or identification card application after 5:00 p.m. July 1 through 5:00 p.m. on September 30 in any even-numbered year or if a mail application is postmarked after 5:00 p.m. July 1 through 5:00 p.m. on September 30 in any even-numbered year or if a mail application is received without a postmark more than five (5) days after July 1 through 5:00 p.m. on September 30 in any even-numbered year.

OKLA. STAT. TIT. 26, §5-104.
PARTY MUST BE RECOGNIZED.
(Laws 1974, c. 153, § 5-104, operative Jan. 1, 1975.)

Candidates may file for the nomination of a political party only if said party is recognized by the laws of the State of Oklahoma.

OKLA. STAT. TIT. 26, §5-105.
CANDIDATE MUST BE REGISTERED – EXCEPTIONS
(Laws 1987, c. 27, § 1, eff. Nov. 1, 1987.)

A. To file as a candidate for nomination by a political party to any state or county office, a person must have been a registered voter of that party for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state. Provided, this requirement shall not apply to a candidate for the nomination of a political party which attains recognition less than six (6) months preceding the first day of the filing period required by law. However, the candidate shall be required to have registered with the newly recognized party within fifteen (15) days after such party recognition.

B. To file as an independent candidate for any state or county office, a person must have been registered to vote as an independent for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state.

OKLA. STAT. TIT. 26, §5-105.
CANDIDATE MUST BE REGISTERED – EXCEPTIONS
(Amended by Laws 2004, c. 53, § 7, emerg. eff. April 1, 2004.)

A. To file as a candidate for nomination by a political party to any state or county office, a person must have been a registered voter of that party for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state. Except, however, to file as a candidate for nomination by a political party to any state or county office in 2004, a person must have been a registered voter of that party no later than December 21, 2003. Provided, this requirement shall not apply to a candidate for the nomination of a political party which attains recognition less than six (6) months preceding the first day of the filing period required by law. However, the candidate shall be required to have registered with the newly recognized party within fifteen (15) days after such party recognition.

B. To file as an independent candidate for any state or county office, a person must have been registered to vote as an independent for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state. Except, however, to file as an independent candidate for any state or county office in 2004, a person must have been registered to vote as an independent no later than December 21, 2003.

OKLA. STAT. TIT. 26, § 5-110. FILING PERIOD
(Laws 1974, c. 153, § 5-110, operative Jan. 1, 1975.)

Declarations of candidacy provided herein must be filed with the secretary of the appropriate election board no earlier than 8:00 a.m. on the first Monday after Independence Day of any even-numbered year and no later than 5:00 p.m. on the next succeeding Wednesday. Said declarations of candidacy may be transmitted by United States mail, but in no event shall the secretary of any election board accept said declarations after the time prescribed by law.

OKLA. STAT. TIT. 26. § 5-110. FILING PERIOD
(Amended by Laws 2003, c. 162, § 1.)

Declarations of Candidacy provided herein must be filed with the secretary of the appropriate election board no earlier than 8:00 a.m. on the third Monday in June of any even-numbered year and no later than 5:00 p.m. on the next succeeding Wednesday. Such Declarations of Candidacy may be transmitted by United States mail, but in no event shall the secretary of any election board accept such Declarations after the time prescribed by law.

OKLA. STAT. TIT. 26, § 5-110. FILING PERIOD
(Amended by Laws 2003, c. 162, § 1; Laws 2004, c. 53, § 8, emerg. eff. April 1, 2004.)

Declarations of Candidacy provided herein must be filed with the secretary of the appropriate election board no earlier than 8:00 a.m. on the first Monday in June of any even-numbered year and no later than 5:00 p.m. on the next succeeding Wednesday. Such Declarations of Candidacy may be transmitted by United States mail, but

in no event shall the secretary of any election board accept such Declarations after the time prescribed by law.